

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

In re Patent Application of

WIRTH, Jr. et al

Serial No. 10/696,587

Filed: October 30, 2003

Title: PUSH BLOCK HAVING RETRACTABLE HEEL



Atty Dkt. 3584-33

C# M#

TC/A.U.: 3724

Examiner: Nguyen, P.

Date: September 26, 2006

27W
AF

Mail Stop Appeal Brief - Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

☐ **Correspondence Address Indication Form Attached.**

☐ **NOTICE OF APPEAL**

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the Examiner twice/finally rejecting applicant's claim(s).

\$500.00 (1401)/\$250.00 (2401) \$

☐ An appeal **BRIEF** is attached in the pending appeal of the above-identified application

\$500.00 (1402)/\$250.00 (2402) \$

☐ Credit for fees paid in prior appeal without decision on merits

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☒ A reply brief is attached.

(no fee)

☐ Petition is hereby made to extend the current due date so as to cover the filing date of this paper and attachment(s)

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Any future submission requiring an extension of time is hereby stated to include a petition for such time extension. The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our **Account No. 14-1140**. A duplicate copy of this sheet is attached.

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NIXON & VANDERHYE P.C.

By Atty: Michelle N. Lester, Reg. No. 32,331

Signature: _____



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REPLY BRIEF UNDER 37 CFR § 41.41

Responsive to the Examiner's Answer mailed August 11, 2006, applicant submits herewith their reply brief pursuant to 37 CFR §41.41.

It is noted that in Section (9)(1) the Examiner characterizes Sizemore as teaching a shoe "capable of being used as a push block device" and including *inter alia* a "heel defining a second working surface disposed in a second plane". Neither of these characterizations is consistent with the understanding of a skilled artisan examining Sizemore without the benefit of applicant's disclosure. First and foremost, Sizemore's shoe is not taught as and would not be considered by any skilled artisan to be suitable for use as a push block device. Furthermore, although it can be grasped by hand, no skilled artisan would consider Sizemore's shoe to include a handle component. Additionally, irrespective of whether the Sizemore shoe could be used by a misguided woodworker as a push block device while holding the shoe upper, Sizemore does not in any way teach or suggest a second working surface disposed in a second plane. In this regard, the retractable cleats taught by Sizemore are each small, generally cylindrical

components (see Figure 2). The bottom surface of those cleats is parallel to the bottom surface of the shoe sole and thus cannot define the claimed second working surface. Therefore, the only part of the cleat that could be alleged to constitute the claimed second working surface is the curved peripheral surface of the cleat. However, that surface does not define a planar second working surface. Any contact between the side surface of the cleat and e.g., a block of wood would be a line contact. Thus, there is no second working surface defined in a plane. In fact, the Examiner admits that the alleged second working surface is not planar in his arguments regarding claim 15. Indeed, the Examiner's sketch on page 9 of the Examiner's Answer clearly demonstrates the Examiner's interpretation of the second working surface as a curved surface which does not read on the claim 1 limitation that the second working surface is disposed in a plane disposed at an angle to the first plane. Further, in defending his rejection of claim 15, the Examiner says that applicant has not said "whether the second working surface is a plane surface or a curved surface". This is not true, however, because it is limited to a planar surface, in claim 1.

Regarding claim 11, the Examiner characterizes the unnumbered plate on top of element 3 as the claimed retention plate. However, the plate on top of element 3 in Sizemore is not disclosed as and would not be considered to "secure the retractable heels to the main body". The plate on top of component 3 is disposed at the top end of the springs of the retractable cleats, but is not disclosed as nor does it have any apparent function relating to securing the cleats. Component 3 does that. Therefore, the Examiner's reliance on Sizemore in rejecting claim 11 is without merit.

Claim 12 is allowable by virtue on its dependence on claim 11. Even if element 3 is a slip resistant pad, there is no retention plate as required by claim 11. Therefore, claim 12 is allowable as well.

With regard to claim 15, the Examiner refers to an annotated version of Figure 1 of Sizemore. However, claim 15 requires more than leading and trailing halves. Claim 15 provides that the second working surface faces the leading half and extends

widthwise of the main body. The Examiner says that applicant's argument is not persuasive because applicant has not defined whether the second working surface is a plane surface or a curved surface. This is not true because claim 1 characterizes the second working surface as defined in a second plane that is disposed at an angle to the first plane. Thus, it is clear that the Examiner has not fully considered all limitations of applicant's claim 1 in rejecting the claims over Sizemore.

As mentioned above, the only surface of the retractable cleats that the Examiner alleges to read on the claimed second working surface is the curved peripheral surface of the cleats, which is not planar (as required by applicant's claim 1) and does not extend widthwise of the main body.

Regarding the Examiner's rejection of claims 5 and 6 over Misevich, the Examiner asserts that Misevich teaches providing a slip resistant pad for an outsole and an insole of a shoe in column 5, and Figure 11 and 12. In this regard, the Examiner continues to misunderstand Misevich. Misevich does not teach providing a slip resistant pad for the bottom surface of an outsole of a shoe. Rather what Misevich teaches in column 5 and in Figures 11 and 12 is that a patterned upper surface of an outsole may be provided to prevent slipping of the insole. Thus, the Misevich teaching of a slip resistant pad would not teach or suggest to the skilled artisan the provision of a slip resistant pad secured to "at least one of the first and second working surfaces" as recited in applicant's claim 5. The surfaces on which Misevich provides a slip resistant pad or pattern are not "working surfaces". The slip resistance is either provided on the insole or on the upper surface of the outsole, which is exposed to the insole, both of which are inside the shoe. Therefore, even if a resistant pad or slip resistant surface were provided in Sizemore based on the teachings of Misevich, they would not be provided on the shoe bottom surface(s).

With regard to claim 16, the Examiner alleges that Sizemore teaches that the material of the upper part of the shoe and the sole of the shoe "is rubber which is plastic". The Examiner is incorrect in two respects. Firstly, column 2, lines 26-55, says

that the upper portion and the sole "may be made of any number of conventional materials (e.g. leather, rubber, etc.)". The skilled artisan would understand this to mean that the upper portion is leather and the sole is rubber, which are conventional materials for an athletic shoe of the type Sizemore describes. Even if the skilled artisan were to consider that the upper and sole could (both) be rubber, the Examiner is incorrect in saying that "rubber is plastic". Rubber is a natural material derived from rubber trees. Plastic is an organic compound produced by polymerization. Therefore, the Examiner's attempt to equate rubber and plastic is simply wrong, as is the Examiner's suggestion that it would be "obvious" to mold the upper and sole of Sizemore integrally in one piece from plastic.

For the reasons advanced in appellant's Brief on Appeal, and for the reasons advanced in the rebuttal arguments presented above in response to the Examiner's Answer, it is respectfully submitted that the Examiner's rejections of applicant's claims are without merit and cannot properly be sustained. Reversal of all rejections of record is respectfully submitted.

Respectfully submitted,

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